



**PATENT** 

Docket No. 0720-4058

## DEPUTY A/C PATENTS IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: CARL H. MEYERHOEFER ET AL.

SERIAL NO.: 08/993,271

**GROUP ART UNIT: 2747** 

FILED:

**DECEMBER 18, 1997** 

**EXAMINER: CLARK S. CHENEY** 

FOR:

NETWORK INTERFACE DEVICE FOR HIGH SPEED DATA LINES

CERTIFICATE OF MAILING (37 C.F.R. 1.8a)

ASSISTANT COMMISSIONER FOR PATENTS Washington, D.C. 20231

Sir:

I hereby certify that the attached (1) Petition Pursuant To 37 C.F.R. §1.137, M.P.E.P. §711.03(c) And The Decision In Delgar V. Schuyler, 172 USPQ 513 To Withdraw The Holding Of Abandonment (enclosing Exhibits A-E) and copy of same, (2) a check in the amount of \$130.00, (3) return receipt postcard and (4) this Certificate Of Mailing are being deposited with the United States Postal Service on the date shown below with sufficient postage as first-class mail in an envelope addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Dated: June 26, 2000

Reg. No. 27,434

CORRESPONDENCE ADDRESS: **MORGAN & FINNEGAN LLP** 345 Park Avenue New York, New York 10154 (212) 758-4800 (212) 751-6849 Facsimile

FORM: CERT..NY Rev. 05/27/98



Docket No. 0720-4058

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE OFFICE OF PETITIONS

APPLICANT(S): CARL H. MEYERHOEFER et al.

**GROUP ART UNIT: 2747** 

SERIAL NO.

: 08/993,271

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: NETWORK INTERFACE DEVICE FOR HIGH SPEED DATA LINES

RECEIVED

Assistant Commissioner For Patents

Washington, D.C. 20231

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OFFICE OF PETITE AS

PETITION PURSUANT TO 37 C.F.R. §1.137, M.P.E.P. §711.03(5)UTY A/C PATENTS AND THE DECISION IN DELGAR V. SCHUYLER, 172 USPQ 513

TO WITHDRAW THE HOLDING OF ABANDONMENT

Sir:

Applicants are in receipt of a Notice Of Abandonment in the above-identified application for failure to pay an issue fee in response to a Notice Of Allowance purportedly mailed by the United States Patent and Trademark Office ("PTO") on or about November 22, 1999. A search of the file jacket and docket records indicates that the Notice Of Allowance was never received by Applicants' attorney and resulted in abandonment of the case.

As such, the application was abandoned through no fault on the part of Applicants or their attorney. It is respectfully submitted that Applicants' non-receipt of the Notice Of Allowance purportedly mailed by the PTO on or about November 22, 1999 (according to a telephone call with Mr. Thomas Hawkins, the Abandonment Contact Person) was the sole cause

of the abandonment.

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Pursuant to the provisions of MPEP §711.03(c) and the decision in <u>Delgar, Inc. v.</u>

<u>Schuyler, Comr. Pats.</u>, 172 U.S.P.Q. 513 (D.D.C. 1971), Applicants hereby Petition the

Commissioner for a withdrawal of the holding of abandonment and a mailing of a new Notice Of Allowance.

The petition fee of \$130.00 as required under 37 C.F.R. §1,17(1) is enclosed. Should any additional fees be required in connection with this Petition, authorization is given to charge Deposit Account 13-4500, Order No. 0720-4058.

In support of this Petition and in compliance with the showing mandated by M.P.E.P. 711.03(c), Applicants attach the Declaration of Shirley Hopkins, the Docket Manager at Morgan & Finnegan. As the Declaration and other attached exhibits will bear out, the firm maintains a thorough and comprehensive system for docketing all correspondence received from the PTO and for reminding the responsible attorney of all associated due dates and statutory dates. As the Declaration of Ms. Hopkins will bear out, the Notice Of Allowance was never received by the firm from the United States Patent and Trademark Office.

Applicants submit that no response to the Notice Of Allowance need be submitted with this Petition. To date, Applicants have never seen the Notice Of Allowance, and have therefore been unable to respond. Applicants request that after withdrawal of the holding of abandonment, a copy of the Notice Of Allowance be mailed, and the time for response be reset as of the mailing date.

The general facts supporting a withdrawal of the holding of abandonment are as follows:

- 1. All correspondence in the application was to be forwarded directly to Morgan and Finnegan as per a "Combined Declaration And Power Of Attorney For Original, Design, National Stage Of PCT, Supplemental, Divisional, Continuation Or Continuation-In-Part Application" executed by Applicants and filed in the case on December 18, 1997.
- 2. On September 7, 1999, Morgan & Finnegan received an Official Action on the merits mailed on September 2, 1999. In response to said Official Action, Applicants (through Morgan & Finnegan) prepared and filed a response, which also included a Terminal Disclaimer To Obviate A Double Patenting Rejection Over Prior Art, on October 14, 1999.
- 3. The next communication received from the USPTO was a "Notice Of Abandonment" received on June 19, 2000 (that was mailed by the USPTO on June 12, 2000). The Notice Of Abandonment indicates that the application had been abandoned for failure to pay the issue fee in response to a Notice Of Allowance. A copy of the Notice Of Abandonment is attached as Exhibit A. No Notice Of Allowance was ever received by the firm in this application.
- 4. In response to the Notice Of Abandonment, the undersigned's secretary phoned Mr. T. Hawkins, the Abandonment Contact Person (703-305-8380). Mr. Hawkins stated that the Notice Of Allowance was dated November 22, 1999 and was mailed on or about that date.

It is respectfully submitted that in view of these facts, the abandonment of the application was due in whole to non-receipt of the Office Action and not in any part due to required action not undertaken by Applicants or the undersigned.

0720-4058

The above facts, in conjunction with the supporting Declaration of Ms. Hopkins, attached as Exhibit B, clearly justifies the withdrawal of the holding of abandonment and the mailing of the new Notice Of Allowance.

Favorable consideration of the Petition; withdrawal of the holding of abandonment; and mailing of a copy of the Notice Of Allowance with the time for response reset are therefore respectfully requested.

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account 13-4500, Order No. 0720-4058. A duplicate of this Petition is attached.

In the event that a telephone conference would facilitate examination in any way, the Examiner is invited to contact the undersigned representative at the number provided.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

Registration No. 27,434

Dated: JUNE 26, 2000

Mailing Address MORGAN & FINNEGAN, L.L.P. 345 Park Ave New York, New York 10154 (212) 758-4800 (212) 751-6849 (FAX)



UNITED STATES DEPARTMENT OF COMMERCE Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

APPLICATION NUMBER FILING DATE FIRST NAMED APPLICANT ATTORNEY DOCKET NO.

08/993,271 12/18/97

345 PARK AVENUE

NEW YORK NY 10154

MEYERHOEFER

C

0720-4058

7542/0612 MORGAN & FINNEGAN

CHENEY, C ART UNIT

PAPER NUMBER

2747

**EXAMINER** 

305-8380

DATE MAILED:

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	NOTICE OF ABANDONMENT			
This	s application is abandoned in view of:	,		
	Applicant's failure to timely file a proper response to the Office letter mailed on			
	A response (with a Certificate of Mailing or Transmission of			
	A proposed response was received on, but it does not constitute rejection.	te a proper resp	oonse to the final	
	(A proper response to a final rejection consists only of: a timely filed amendment whi condition for allowance; a Notice of Appeal; or the filing of a continuing application up			·.
,	☐ No response has been received.	$\Gamma_{i,j}$		
χÓ	Applicant's failure to timely pay the required issue fee within the statutory period of three of the Notice of Allowance.	months from th	e mailing date	
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	☐ The submitted issue fee of \$is insufficient. The issue fee required by 37 €	CFR 1.18 is \$_		
	The issue fee has not been received.			
	Applicant's failure to timely file new formal drawings as required in the Notice of Allowabi	ility.		
	Proposed new formal drawings (with a Certificate of Mailing or Transmission of		) were	7
	☐ The proposed new formal drawings filed are not acceptable.		·	
	☐ No proposed new formal drawings have been received.			
	The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed o	on		
	The letter of express abandonment which is signed by the attorney or agent of record, the interest, or all of the applicants.	ne assignee of t	he entire	
	The letter of express abandonment which is signed by an attorney or agent (acting in a 37 CFR 1.34(a) upon the filing of a continuing application.	representative o	capacity under	•
	The decision by the Board of Patent Appeals and Interferences rendered on for seeking court review of the decision has expired and there are no allowed claims.		•	
	The reason(s) below:	CON	NDONMENT ITACT PERSO LHAWKINS	N IS:



# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE OFFICE OF PETITIONS

Applicant(s)

CARL H. MEYERHOEFER ET AL.

Serial No

08/993,271

Filed

December 18, 1997

For

NETWORK INTERFACE DEVICE FOR HIGH SPEED DATA LINES

### **DECLARATION OF SHIRLEY HOPKINS**

I, SHIRLEY HOPKINS, hereby depose and say:

- I am employed by the intellectual property law firm of Morgan & Finnegan, L.L.P., in New York City, and have been employed by Morgan & Finnegan, L.L.P., since April 1993. I make this Declaration in support of Applicant's "Petition Pursuant To 37 C.F.R. §1.137, M.P.E.P. §711.03(c) And The Decision In Delgar V. Schuyler, 172 USPQ 513 To Withdraw The Holding Of Abandonment", which is filed with this Declaration.
- 2. My principal responsibilities at Morgan & Finnegan include, <u>inter alia</u>, the position of Docket Manager for the firm. I have been the Docket Manager since April 1999. As the Docket Manager for the firm, I am directly in charge of and/or oversee the effort of all docketing personnel in the recordation and docketing of, <u>inter alia</u>, all official papers and other documentation connected with domestic prosecution of U.S. patent and trademark applications being handled by the firm.

- 3. As part of my duties as Docket Manager, I oversee the daily recordation of all incoming mail received from the U.S. Patent and Trademark Office ("PTO"), as well as the associated due dates and statutory dates concerned with that correspondence. The regular practice is that all PTO correspondence in connection with matters being handled by our firm is first directed to the docketing department for proper docketing and recordation in accordance with established practice. I then oversee the dissemination of that mail to the responsible attorneys so that the matters raised by the correspondence (which would have now been docketed and recorded by the docketing department) could be attended to in a timely fashion.
- 4. In connection with full docketing of all correspondence received from the PTO, and to ensure that all due dates are met by the responsible attorneys, a number of login books are maintained by the docketing department. A "mailbook" is kept, wherein all PTO mail is recorded on a daily basis on the day such mail arrives at Morgan & Finnegan from the PTO. For each piece of PTO mail, the mailbook records relevant PTO mailing dates; the serial number (or patent number) associated with each piece of correspondence; and the general nature of the correspondence received. A daily docketing "diary" is also maintained by the docketing department to ensure that responsible attorneys would be reminded by the docketing department of all due and statutory dates for actions required in connection with correspondence received from the PTO. The information for the diary is gleaned from each piece of correspondence received from the PTO. The diary contains daily pages for each business day, and includes the names of the responsible attorneys; patent number (or application serial number); nature of the action to be completed; firm file docket numbers; and the status of action taken by the responsible attorney.

- 5. The docketing department enters all PTO correspondence that has a due date for a reply or action into the computer docketing system that generates reports for each attorney specifying all due dates for that attorney. These computer generated reports are distributed both weekly and monthly.
- 6. Exhibit C is a true and accurate copy of pages from the firm's "mailbook" for the time period November 22, 1999 through January 22, 2000. A review of the mail-book records reveals that no Notice Of Allowance mailed by the PTO on or about November 22, 1999 was received in application Serial No. 08/993,271, as identified by that serial number or the firm's docket number, i.e., 0720-4058.
- 7. Exhibit D is a true and accurate copy of the computer printout for the above-identified application, USSN 08/993,271, docket number 0720-4058. As can be seen, no Notice Of Allowance was received from the PTO.
- 8. Exhibit E is a true and accurate copy of a page from the Morgan & Finnegan diary for February 22, 2000. This would have been the due date for payment of the Issue Fee (Form PTOL-85). As can be seen, for the date in question, no indication is given that a response was due in Serial No. 08/993,271, or its associated docket number 0720-4058. (Note that the application serial numbers appear in the second column and docket numbers appear in the fourth column).

<sup>&</sup>lt;sup>1</sup> A two-month period was selected to demonstrate that no such document was received well after the Patent Office mailing date.

I hereby state that all statements made herein of my own knowledge are true and that all statements made by me on information and belief are believed to be true. I hereby acknowledge that any willful false statement and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of the application and any patent issuing thereon.

Date: June 26, 2000

SHIRLEY HOPKINS

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## **Country Application**

23-Jun-00

Case Number:

RADEMA 0720-4058

Country: US

SubCase:

Client: TII INDUSTRIES, INC.

United States of America

Assignee:

Recorded Date: 18-Dec-1997

Reel Number: 8939

Frame: 0930

Case Type: ORD

**Application Status: PENDING** 

**Application Number:** 08/993271

Filing Date: 18-Dec-1997

**Patent Number:** 

**Issue Date:** 

**Publication Number:** 

**Publication Date:** 

**Priority Number:** 

**Priority Date:** 

Tax Schedule: LE

**Expiration Date:** 

Tax Start Date:

Agent:

**Agent Reference Number:** 

#### **List Of Actions**

Action(s) Due	<b>Due Date</b>		Action Taken
REMINDER	08-Jan-1998	Due Date	08-Jan-1998
POSTCARD	18-Jan-1998	Due Date	18-Jan-1998
3 MO CALL UP	18-Mar-1998	Due Date	18-Mar-1998
FLG. RCPT.	18-Mar-1998	Due Date	18-Mar-1998
Foreign Filing 3 mos. Reminder	18-Mar-1998	Reminder	
4 MO CALL UP	18-Apr-1998	Due Date	18-Apr-1998
Foreign Filing 2 mos. Call up	18-Apr-1998	Reminder	
5 MO CALL UP	18-May-1998	Due Date	18-May-1998
Foreign Filing 1 mo. Call up	18-May-1998	Reminder	
6 MO CALL UP	18-Jun-1998	Due Date	18-Jun-1998
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Action Status Check	18-Jun-1998	Due Date	18-Jun-1998
7 MO CALL UP	18-Jul-1998	Due Date	18-Jul-1998
8 MO CALL UP	18-Aug-1998	Due Date	18-Aug-1998
3 MO. CALL-UP	18-Sep-1998	Due Date	18-Dec-1998
Action Status Check	18-Sep-1998	Due Date	18-Sep-1998
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2 MO. CALL-UP	18-Oct-1998	Due Date	18-Dec-1998

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Action Status Check	18-Jun-1999	Due Date	18-Dec-1998	<del></del>
DUE DATE	02-Dec-1999	Due Date	14-Oct-1999	
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2 MO EXTENSION	02-Feb-2000	Reminder	14-Oct-1999	
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REJECTION-3 MOS Follow Up Date	14-Apr-2000	Due Date	12-Jun-2000	
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6/12/00 NOTICE OF ABANDONMENT RECD

User ID: YZUNIGA

Date Created: 07-Jan-1999

Last Update: 19-Jun-2000

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